



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 30, 1994

Ms. Mary Ruth Holder  
Director, Office of Legal and Regulatory Services  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR94-629

Dear Ms. Holder:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 28430 and ID# 28746.

The Texas Natural Conservation Commission (the "commission") has received a request for "all 1993 manifests required to be kept pursuant to 30 Texas Administrative Code . . . § 330.445 from certain sludge transporters." You advise us that the commission is not in possession of the requested manifests and is under no obligation to make them available to the requestor.

Section 552.021 of the Government Code provides in pertinent part:

(a) Information is public information if, under a law or ordinance or in connection with the transaction of official business, it is collected, assembled, or maintained:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.021. Thus, the Open Records Act will apply to the manifests if they constitute information "collected, assembled, or maintained" by or for the commission within the above provision.

Section 330.445(a) of title 30 of the Texas Administrative Code requires, in pertinent part, that "[p]ersons who collect and transport waste subject to control under [subchapter N of chapter 330, Municipal Solid Waste] shall initiate and maintain a record of each individual collection and deposition . . . in the form of a manifest or other similar documentation approved by the department." 30 T.A.C. § 330.445(a). These manifests must be maintained for three years and must be made available to the commission upon request. *Id.* § 330.445(b).

As section 330.445 of title 30 of the Texas Administrative Code makes clear, the requested manifest information is not information "collected, assembled, or maintained . . . by" the commission within section 552.021(a)(1). We next consider whether it is the kind of public information described by section 552.021(a)(2) of the Government Code: information "collected, assembled, or maintained . . . for a governmental body and the governmental body owns the information or has a right of access to it." The provision now codified as 552.021(a)(2) of the Government Code was added to the Open Records Act in 1989. Acts 1989, 71st Leg., ch. 1248, § 9 at 5023. Open Records Decision No. 558 (1990) interpreted the language now codified as section 552.021(a)(2), stating as follows:

Prior decisions of this office have recognized that a governmental body may contract with a consultant or independent contractor to prepare information for its use in the conduct of official business. *See, e.g.*, Open Records Decision No. 192 (1978). On occasion, the independent contractor has maintained his report and underlying data in his own office, making it available for the governmental body to use without actually having physical custody of the records itself. . . . Where the contractor has prepared information on behalf of a governmental body and makes it available to the governmental body, the information has been held to be subject to the Open Records Act, even though it is not in the governmental body's physical custody. . . .

The language added to section 3(a) [by the 1989 amendment] codifies these prior decisions regarding information prepared *for* a governmental body. [Emphasis in original.]

Open Records Decision No. 558 (1990). In concluding that information held for a university by its consultant was subject to the Open Records Act, this office stated that "the consultant must have acted as an agent of the university in collecting the information." Open Records Decision No. 462 (1987) at 4. *See also* Open Records Decision No. 585 (1991) (discussing agency relationship between governmental body and consultant). In this case, those collecting and transporting waste subject to control under chapter 330 did not prepare the requested manifests as agents of the commission, but in

performance of certain regulatory duties. The commission's inspection right does not convert the private company's records into public records subject to the Open Records Act. Accordingly, the requested manifest information is not information subject to the Open Records Act. Of course, if the commission makes copies of the manifests or takes notes about them in performing its duties under section 330.445, those documents will be subject to the Open Records Act. In addition, the commission must make a good faith effort to relate the request to information in the commission's possession and must help the requestor to clarify his request by advising him of the types of information available.<sup>1</sup> Open Records Decision No. 561 (1990). Beyond these requirements, however, the commission need not obtain the requested manifests in order to comply with the request.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/GCK/rho

Ref.: ID# 28430  
ID# 28746

cc: Mr. Brooks Bradford  
6939 Old Clinton road  
Houston, Texas 77020

---

<sup>1</sup>You explain that transporters are required to provide to the commission an annual summary showing the amounts and types of waste collected, disposition of such waste, and amounts and types of waste delivered to each facility. We understand that the commission maintains these summaries and that they are available for public inspection.